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Supreme Court of the United States

October Term, 1963

No. [redacted]/7

JESSE M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer of District No. 1 National Marine Engineers' Beneficial Association, AFL-CIO,

Petitioner,

against

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above entitled matter on November 13, 1963.

Citations to Opinions Below

The opinion of the District Court of the Southern District of New York (R. D. C. 97-113)* printed in Appendix B hereto, *infra*, p. 28 is reported in 221 F. Supp. 545 (S. D. N. Y. 1963). The opinion of the Court of Appeals for the Second Circuit, (R. C. A. 56-64)** printed in Appendix B hereto, *infra*, p. 18, is yet unreported.

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* Record, District Court.

** Record, Court of Appeals.

Jurisdiction

The judgment of the Court of Appeals for the Second Circuit was entered on November 7th, 1963 (R. C. A. 65) and is printed in Appendix B hereto at p. 27. The jurisdiction of this Court is invoked under 29 U. S. C., Section 1254(1).

Statutes Involved

The statutory provisions involved are the following sections of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519: Section 101(a)(1), 29 U. S. C., Section 411(a)(1); Section 101(a)(4), 29 U. S. C., Section 411(a)(4); Section 102, 29 U. S. C., Section 412; Section 401(e), 29 U. S. C., Section 481(e); Section 402, 29 U. S. C., Section 482; and Section 403, 29 U. S. C., Section 483.

They are printed in Appendix A, *infra*, p. 13.

Statement

Respondents, members of District 1, Marine Engineers' Beneficial Association, instituted their action in the District Court for an order enjoining the conduct of an impending election for Union officers "unless and until defendant has afforded to each of its members a fair opportunity to nominate any persons meeting fair and reasonable eligibility requirements for any or all offices * * *" (R. D. C. 9). The jurisdiction of the District Court was invoked under the Labor-Management Reporting and Disclosure Act of 1959 (hereinafter called the "Act") Section 101(a)(1)* which guarantees "equal rights and privileges * * * to nominate candidates." The complaint alleges that the following Union procedures were unreasonable and in violation of Section 101(a)(1) of the Act:

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* 29 U. S. C., Section 411(a)(1).

1. The District By-Laws which provide "Any member may submit his name for nomination for Union officers in the District * * *."

2. A practice of the Union that a member may not run for or hold more than one full-time District office.*

3. A provision of the Union's National Constitution that a candidate for full-time elective office must have been a member for 5 years and served 180 days of sea-time in each of the 2 of the 3 years preceding nominations on vessels covered by collective bargaining agreements with the Union, or equal time served as a paid full-time elected or appointed official of the Union or any of its affiliated bodies.

4. A provision of the Union's National Constitution that a candidate for the office of District President (an office for which none of the individual plaintiffs sought nomination) must have previously served as a paid full-time official of any affiliated Union body.

The three individual plaintiffs, each of whom had nominated himself for the full-time office of Branch Agent and for no other office were declared disqualified by the Union's Credentials Committee for the sole reason that they did not have the sea-time service required by the Union's Constitution (R. D. C. 46).

Respondents sought a preliminary injunction against the then impending Union election. Petitioner filed a cross-motion to dismiss the complaint on the ground that the District Court lacked jurisdiction under the Act in that the subject matter of the action was governed by the

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* This very practice was upheld by the New York Appellate Division on December 10, 1963 when five judges unanimously affirmed, without opinion, a decision of the State of New York denying an injunction of the very election involved herein. *Roman* v. *Calhoon* (N. Y. Sup. Ct. 1963) 48 C. C. H. Lab. Cas. Para. 18, 524, aff'd (App. Div.) N. Y. L. J. Dec. 11, 1963, p. 14.

provisions of Title IV of that Act**, which permits only the Secretary of Labor to initiate appropriate action.

The District Court dismissed the complaint, holding that the complained of conduct, although alleged to be a violation of Title I of that Act, clearly constituted qualifications for candidacy governed by Title IV of that Act. The Court held that the reasonableness of such qualifications must be tested only in accordance with the provisions of Title IV and not of Title I. The District Court noted that any eligibility requirement for office, no matter how reasonable, would limit the number of persons members might want to nominate, but that under Title IV of the Act the respondents were relegated to the post-election procedure initiated by a complaint to the Secretary of Labor. Otherwise, said the Court, every eligibility requirement for office would fall within Title I. As to the self-nomination procedure, the District Court held that even if it were to be viewed as a Title I problem, it was a reasonable procedure since a member does not even have to attend a Union meeting or conference to place his name in nomination. The Court of Appeals reversed, holding that the District Court had jurisdiction under Title I of the Act in that the "combined effect of the eligibility requirements and the restriction to self-nomination" violated the right of members under Title I to "equal rights and privileges * * * to nominate candidates." The Court noted that it had no occasion to consider whether the eligibility requirements or the self-nomination procedure, each standing alone, would still infringe the guarantee of Section 101(a)(1) of Title I of the Act, or whether each would raise only the question of denial of "a reasonable opportunity * * * for the nomination of candidates" under Section 401(e) of Title IV of the Act.

The Court of Appeals remanded the cause to the District Court with directions to issue an injunction promptly

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** 29 U. S. C., Section 481-484.

against the current election and to require the Union to submit new provisions as to the right to nominate that will meet the mandate of Section 101(a)(1) of the Act.

Question Presented

1. Whether the District Court has jurisdiction to entertain a suit by a union member to enjoin a union election because of an alleged violation of the right to nominate under Title I of the Labor-Management Reporting and Disclosure Act of 1959, where the activity complained of is the alleged failure to provide a reasonable opportunity to nominate candidates and to be eligible to be a candidate as required under Title IV of that Act, which can only be enforced by the Secretary of Labor after an election.

Reasons for Granting a Writ

1. The decision of the Court of Appeals for the Second Circuit (Appendix B, *infra*, p. 18) is in conflict with the decision of the Third Circuit Court of Appeals in *Mamula* v. *United Steelworkers of America*, 304 F. 2d 108 (3d Cir.) cert. den. 371 U. S. 823 (1962) (Appendix C, *infra*, p. 39). In *Mamula*, as here, an action was instituted against a union for an order enjoining an impending election of an officer. Jurisdiction there, as here, was invoked under Title I of the Labor-Management Reporting and Disclosure Act of 1959*, upon the allegation that plaintiff had been denied an opportunity to nominate himself and that plaintiff was thereby denied an equal right and privilege "* * * to nominate candidates" under Section 101(a)(1) of the Act**. The union defendant there, as here, moved to dismiss the complaint on the ground that Title IV rather

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* 29 U. S. C., Sections 411(a)(1) and 412.

** 29 U. S. C., Section 411(a)(1).

than Title I governs the procedure for nominating and electing officers and that under Title IV only the Secretary of Labor may institute an action to vindicate the right guaranteed by Title IV of that Act pertaining to nominations and eligibility.

In Mamula, the District Court held that plaintiff's equal right and privilege to nominate or be nominated as a candidate for district director under Section 101(a)(1) of the Act had been violated by the union's constitution, 198 F. Supp. 652 (D. C. Pa. 1961). The Third Circuit reversed, holding that Title IV rather than Title I governs such conduct and that the District Court lacked jurisdiction.

The Second Circuit held that a union's eligibility requirements for candidates, considered together with a union procedure for self-nomination by members violate the equal right and privilege "to nominate candidates" under Title I of the Act, and that therefore the District Court had jurisdiction (Appendix B, *infra*, p. 24). The Third Circuit held that an outright denial of the right to nominate or to be nominated as a result of the operation of the union's constitution was governed by Title IV rather than Title I, and that the District Court did not have jurisdiction, preemption having been created by Congress in favor of the Secretary of Labor (Appendix C, *infra*, pp. 41-42): In other Circuits, while this issue does not appear to have arisen on a Court of Appeals level, the rulings of the District Courts have been fairly consistent with that of the Third Circuit, as the Court in *Mamula* notes (Appendix C, *infra*, pp. 46-48).

The basic problem is whether violations concerning nominations and candidacy qualification proceedings, which clearly appear to be within the ambit of Title IV of the Act and thereby preempted by the Secretary of Labor, may be the basis for the assumption of jurisdiction by the Federal Courts in actions by individuals other than the Secretary of Labor on the ground that Title IV violations

in some way affect the equal right and privilege to nominate under Title I.

The Second Circuit appears to have blurred, if not destroyed, any distinction between Title IV violations and Title I violations in respect to nomination and eligibility requirements. The Third Circuit recognized a clear dichotomy between Titles I and IV and declared that despite the legislative "interplay" between the two Titles in respect to nomination and eligibility requirements the Federal Courts have no jurisdiction to intervene in the general area covered by Title IV and particularly those covered by Section 401(e) of the Act. On the other hand, the Second Circuit, while acknowledging the "interplay" by its statement that "Section 401 covers a much wider area with respect to union elections than the guarantees of equal rights and privileges to nominate and to vote contained in Section 101(a)(1)," concluded that it had jurisdiction to consider the reasonableness of the very nomination and eligibility requirements covered by Section 401(e) of the Act in order to assert its jurisdiction under Section 101(a)(1) (Appendix B, *infra*, pp. 23-24). The Second Circuit thereby holds in effect that the Federal Courts may invade Title IV areas by considering and determining the reasonableness of nomination and eligibility requirements concededly under Title IV and then support jurisdiction under Title I by holding that such eligibility requirements affect "equal rights and privileges * * * to nominate candidates" under Title I.

It is readily apparent that the Act, at least as it relates to the questions of nominations and election procedures, is hardly a model of legislative clarity. For that very reason, the conflicting views of two Circuits which result in the assertion or denial of Federal Court jurisdiction, depending on which view is adopted, require the earliest resolution by this Court.

2. The question presented is of importance in the administration of the Act, affecting as it does the nomination and election procedures of international and national unions throughout the country as well as the almost countless number of their affiliated or subordinate bodies and subdivisions.

The practical effect of the Second Circuit is the elimination of the Secretary of Labor as a Congressionally designated arbiter in the investigation of the complex areas of nominations and eligibility for candidacy in union elections, since any eligibility requirement for candidates necessarily must have the effect of restricting the right of members to nominate candidates*. Were the Second Circuit's interpretation of the Act to prevail, jurisdiction would be vested in the Federal Courts in respect to almost any complaint made by a private party as to the meaning and effect of union requirements for nomination and eligibility in union elections. The Federal Courts would be free to assume the role relegated to the Secretary of Labor initially to determine whether such requirements were unreasonable. This would constitute an usurpation of the statutory role and authority assigned by Congress to the Secretary of Labor and an elimination of the exper-

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* The District Court made the observation:

"It is true that a requirement of sea time, as a prerequisite to candidacy, limits the number of people plaintiffs can nominate. However, it is hard to imagine any rule or requirement on candidacy, no matter how reasonable, which would not similarly limit the number of people plaintiffs might nominate. If plaintiffs' argument were accepted, every eligibility requirement for office would fall within Title I. However, the structure of the Act is clearly different. The reasonableness of the sea time requirement, therefore, must be tested in accordance with the procedures set forth for violations of Title IV and not through the procedures under Title I." (Appendix B, *infra*, pp. 35-36)

tise of the Secretary of Labor in considering such matters*. In turn, such an approach would open the flood-gates of litigation in the District Court for determinations on those issues in the many thousands of union elections constantly being held throughout the country.**

3. The decision of the Court below is believed to be erroneous and the conflicting decision of the Third Circuit in *Mamula* v. *United Steelworkers of America, supra,* correct.

The Third Circuit obviously assumed a rational intent by Congress to assign designated areas in respect to union elections to the Secretary of Labor for action and to assign to the District Courts direct jurisdiction over the limited area of specific acts of discrimination in respect to the

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* In *Colpo* v. *Highway Truck Drivers,* 201 F. Supp. 307 (D. Del. 1961) vacated as moot, 305 F. 2d 362 (3d Cir.) cert. denied, 371 U. S. 890 (1962), the District Court commented:

> "The Secretary's presence as a party litigant in the civil action which may subsequently be brought is no less crucial; in such capacity he brings all of his expertise to bear on the matter pending, thereby greatly assisting the Court in reaching a sound disposition which comports with the delicately balanced policy considerations implemented by Congress in Title IV."

This Court in holding that the National Labor Relations Board has exclusive jurisdiction when an activity is "arguably" prohibited or protected under the National Labor Relations Act noted the Congressional intent to entrust administration of labor policy under that Act "to a centralized administrative agency, armed with its own procedures and equipped with its specialized knowledge and cumulative experience." *San Diego Building Trades* v. *Garmon,* 359 U. S. 236, 242 (1959). The situation here appears to be analogous.

** While this would apply to practically every union, it assuredly would have an immediate impact on almost all maritime unions since the provisions of the Union's Constitution and its practices here involved are similar to those in other maritime unions and will lead to further extensive litigation and confusion, in the absence of a determination by this Court in the instant case. (R. D. C. 8-9)

equal right of members to nominate candidates. The Second Circuit decision can only be based on an irrational intent by Congress on the one hand to vest jurisdiction in the Secretary of Labor in matters affecting nominations and eligibility requirements and simultaneously to divest the Secretary of Labor of any authority in the event a Federal Court determines that it has jurisdiction under Title I because of the effect of the very conduct governed by Title IV. The Congress must be assumed to have had a rational intent, as described by the Third Circuit in *Mamula*.

Title I of the Act grants jurisdiction to the District Court to remedy violations of Section 101(a)(1) in an action initiated by individual members. The rights enumerated under Title I include "equal rights and privileges within such labor organization * * * to nominate candidates."

It is apparent that Congress intended by this provision to protect union members against discriminatory denial of the right of any member to nominate a candidiate.* Respondents have in fact availed themselves of the equal right under the Union Constitution to nominate themselves.** Since every member of the Union has the right to nominate himself there could not possibly be any discriminatory denial of the right to nominate. Nor would it be proper, under the scheme of the Act, to evaluate

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* "[T]he emphasis, there [Section 101(a)(1)], it seems, is placed on the right of a member to enjoin violations of the Act where one member is granted the right and another is denied it." *McKeon* v. *Highway Truck Drivers and Helpers*, 48 CCH Lab. Cas. Paras. 18,578 (D. C. Del. 1963).

** They were disqualified for that office for the sole reason that they had not complied with the sea-time service requirements of the Union Constitution. (R. D. C. 46). Respondents do not charge that these sea-time requirements were discriminatorily applied to them.

the equal right to nominate in terms of the eligibility requirements for office which are governed by Title IV.*** Were that to be done any distinction between the two Title on this issue * would be obliterated and the Act would thereby become wholly incomprehensible.

Nor can it be said that if the Federal Courts were held to be deprived of such jurisdiction that aggrieved members would thereby be denied any effective relief. Under the statutory scheme of the Act, upon complaint to the Secretary of Labor with respect to any matter affecting nominations or eligibility requirements, the Secretary of Labor is authorized and directed by the Act to investigate and under appropriate circumstances to initiate an action in his official name in the District Court to vindicate the rights asserted and to seek an order setting aside an election and directing a new election be held under conditions consonant with the requirements of the Act.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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* In *Jackson* v. *International Longshoremen's Ass'n*, 212 F. Supp. 79, 82 (E. D. La. 1962), the Court stated:

> "Title I of the Act does not, of course, guarantee to any Union member the right to vote for a specific person, but guarantees him only the right to vote for a duly nominated and qualified candidate."

APPENDIX A

PUBLIC LAW 86-257

86TH CONGRESS, S. 1555

SEPTEMBER 14, 1959

AN ACT

• • •

SHORT TITLE:

SECTION 1. This Act may be cited as the "Labor-Management Reporting and Disclosure Act of 1959".

• • •

BILL OF RIGHTS

SEC. 101. (a)(1) EQUAL RIGHTS.—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

• • •

(4) PROTECTION OF THE RIGHT TO SUE.—No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided,* That any such member may be required to exhaust reasonable hearing procedures (but not

to exceed a four-month lapse of time within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: *And provided further,* That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

• • •

SEC. 102. Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may brinf a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

• • •

SEC. 401(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. Not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have been withheld by his employer for payment to such organization pursuant to his voluntary authorization provided for in a collective bargaining agreement shall be declared ineligible to vote or

be a candidate for office in such organization by reason of alleged delay or default in the payment of dues. The votes cast by members of each local labor organization shall be counted, and the results published, separately. The election officials designated in the constitution and bylaws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted in accordance with the constitution and by-laws of such organization insofar as they are not inconsistent with the provisions of this title.

• • • •

ENFORCEMENT

SEC. 402. (a) A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation,

may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil

action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this title and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization.

(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds—

(1) that an election has not been held within the time prescribed by section 401, or

(2) that the violation of section 401 may have affected the outcome of an election,

the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization. The Secretary shall promptly certify to the court the names of the persons elected, and the court shall thereupon enter a decree declaring such persons to be the officers of the labor organization. If the proceeding is for the removal of officers pursuant to subsection (h) of section 401, the Secretary shall certify the results of the vote and the court shall enter a decree declaring whether such persons have been removed as officers of the labor organization.

(d) An order directing an election, dismissing a complaint, or designating elected officers of a labor organization shall be appealable in the same manner as the final judgment in a civil action, but an order directing an election shall not be stayed pending appeal.

Appendix A

Application of Other Laws

Sec. 403. No labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this title. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this title. The remedy provided by this title for challenging an election already conducted shall be exclusive.

APPENDIX B

Opinion of Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 168—September Term, 1963

(Argued October 23, 1963 Decided November 7, 1963)

Docket No. 28445

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated,

Plaintiffs-Appellants,

—v.—

JESSE M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer of DISTRICT NO. 1 NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION, AFL-CIO,

Defendant-Appellee.

Before:

LUMBARD, *Chief Judge,*
MEDINA and FRIENDLY, *Circuit Judges.*

Appeal by members of a labor union from an order of the District Court for the Southern District of New York, Wilfred Feinberg, *Judge,* dismissing for want of jurisdiction a complaint alleging that the union had deprived plaintiffs of their equal right to nominate in violation of § 101 (a)(1) of the Labor-Management Reporting and Disclosure Act of 1959. Reversed.

Appendix B

BURTON H. HALL, New York, N. Y., *for Appellants.*
DAVID SCRIBNER (Pressman & Scribner, New York, N. Y.), *for Defendant-Appellee.*

FRIENDLY, *Circuit Judge*:

On August 12, 1963, plaintiffs, members of District No. 1, National Marine Engineers' Beneficial Association, a labor organization consisting of some 6000 marine engineers, instituted this action in the District Court for the Southern District of New York against the District Association, its President and its Secretary-Treasurer. The complaint asserted that the action was brought on behalf of plaintiffs and all other similarly situated members of the union to prevent the infringement of rights guaranteed by § 101(a)(1) of the Labor-Management Reporting and Disclosure Act of 1959 (hereafter LMRDA), 29 U. S. C. § 411 (a)(1); the jurisdiction of the district court was laid under § 102. Believing that in fact the complaint alleged only a violation of § 401 of LMRDA, 29 U. S. C. § 481, and that the Act did not confer jurisdiction on a federal court to entertain a suit by union members to prevent a violation of that section, Judge Feinberg dismissed the complaint for want of federal jurisdiction. We think the complaint alleged a violation of § 101(a)(1) and that federal jurisdiction existed under § 102.

The complaint set forth that bylaws, imposed upon District No. 1 by a District Executive Committee composed of officials of its various locals, provide that the only candidate whom a member may nominate for any office is himself; that the practice of the District prohibits a member from nominating himself for more than one District office; that the national constitution of the union further restricts members' right to nominate by providing that no member other

than an incumbent official is eligible for nomination or election to a full-time elective office unless he has been a member for five years and has served 180 days or more of sea time on vessels covered by collective bargaining agreements with the national organization or its subsidiary bodies in each of two of the three years preceding nomination; and that the national constitution further provides that a candidate for the office of District President must have previously been elected and served as a full-time and paid official of an organization affiliated with the national body. The complaint prayed that an impending election under these provisions should be enjoined, as well as for other relief. An affidavit of plaintiff Harvey, submitted in support of a motion for a temporary injunction, enlarged upon the complaint by alleging that defendant was holding its first general election during the 90-day period beginning September 1, 1963; and that each plaintiff had been denied any right to nominate because he could nominate only himself but was ineligible for failure to meet the 180-day sea time requirement. Defendant's cross-motion to dismiss the complaint did not challenge plaintiffs' allegations but contended that these did not make out a case under § 101(a)(1) of LMRDA and that in any event the court was without jurisdiction.

Title I of LMRDA, "Bill of Rights of Members of Labor Organization," was added during the Senate's consideration of the Kennedy-Ervin bill, S. 1555, 86th Cong., 1st Sess. (1959), as reported by the Committee on Labor and Public Welfare. The initial proposal by Senator McClellan, adopted on April 22, 1959, see NLRB Legislative History of Labor-Management Reporting and Disclosure Act of 1959, 1102, 1119 (1959), was substantially amended in a form proposed by Senator Kuchel and passed by the Senate on April 25, *id.* at 1220, 1239 ff. The bill later passed by the House of Representatives and the statute as enacted

contained provisions similar to Senator Kuchel's amendment. For our purposes the vital ones are the portion of § 101(a)(1) which declares that "Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization * * * " and § 102, which reads as follows:

> "Sec. 102. Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located."

The Kennedy-Ervin bill had included a Title III—Elections which became Title IV of LMRDA. Section 401 contains a considerable number of substantive provisions. Among these are requirements concerning the frequency and manner of election of officers, distribution by the union of campaign literature at a candidate's request and nondiscrimination in the use of membership lists,[1] availability of such lists for inspection by a candidate, "adequate safeguards to insure a fair election * * * including the right of any candidate to have an observer at the polls and at the counting of the ballots," the notice of an election to be given to members etc. Most important here are the first and third sentences of § 401(e):

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[1] This requirement is made "enforceable at the suit of any bona fide candidate for office in such labor organization in the district court of the United States in which such labor organization maintains its principal office." § 401(c).

> "(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. * * * Each member in good standing shall be entitled to one vote."

Section 401 is followed by § 402, entitled "Enforcement." This says, in relevant part, that a member of a labor organization who has exhausted union remedies or has failed to obtain a final decision within three months after invoking them "may file a complaint with the Secretary [of Labor] within one calendar month thereafter alleging the violation of any provision of section 401"; and that

> "(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this title and such rules and regulations as the Secretary may prescribe."

Appendix B

Section 403, headed "Application of Other Laws," provides

> "Sec. 403. No labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this title. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this title. The remedy provided by this title for challenging an election already conducted shall be exclusive."

It is plain enough that § 401 covers a much wider territory with respect to union elections than the guarantees of equal rights and privileges to nominate and to vote contained in § 101(a)(1). Whereas § 101(a)(1) is directed solely to basic rights of members, § 401 deals both with rights of members, which it grants with far greater elaboration and specificity than the earlier section, and with rights of candidates.

It is not contended that the instant action, brought before the distribution of ballots had begun and for the purpose of enjoining an election under the allegedly illegal provisions of the District's bylaws and the national's constitution, encounters the bar of the last sentence of § 403, making a suit by the Secretary of Labor the exclusive remedy "for challenging an election already conducted • • • ".[2] Neither,

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[2] Counsel stipulated that the mailing of the ballots would not adversely affect or enlarge the rights and obligations of the parties. In any event, an election has not been "conducted" in our view at least until the time for balloting has expired. We are not called upon to consider whether if an appropriate action has been begun before an election is "conducted" but the election has not been enjoined, § 403 would require the court to stop in its track once the election was "conducted."

in the view we take of the case, need we consider the much mooted question whether the substantive provisions of § 401 (other than the provision noted in fn. 1) create claims enforceable by private pre-election suits in state or federal courts.[3] For we hold that the complaint alleged a violation of § 101(a)(1), and that the district court had jurisdiction under § 102 to remedy it.

If the union's constitution and bylaws had provided that only paid officials could make nominations for District President and that only incumbent officers or members with 180-day sea time in each of two of the three preceding years could make nominations for any other office, it could hardly be asserted that the members had "equal rights and privileges * * * to nominate candidates." Indeed, such a classification of union members would have been deemed invalid at common law, long before the LMRDA. See *Cameron* v. *International Alliance of Theatrical Stage Employees*, 118 N. J. Eq. 11, 176 Atl. 692 (Ct. Err. & App. 1935). Yet the combined effect of the eligibility requirements and the restriction to self-nomination is precisely that. With respect to the rules here in question, the statement of another district judge, relied on by the opinion below, that self-nomination "makes it as easy to be nominated as possible," is thus

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[3] The affirmative, as to most of the provisions, is argued in Summers, Preemption and the Labor Reform Act—Dual Rights and Remedies, 22 Ohio State L. J. 119, 135-140 (1961). A contrary view, at least as to federal jurisdictions, is taken in such cases as *Johnson* v. *San Diego Waiters Union*, 190 F. Supp. 444 (S. D. Calif. 1961), *Colpo* v. *Highway Truck Drivers*, 201 F. Supp. 307 (D. Del. 1961), vacated as moot, 305 F. 2d 362 (3 Cir.), cert. denied, 371 U. S. 890 (1962), and *Jackson* v. *International Longshoremen's Ass'n*, 212 F. Supp. 79 (E. D. La. 1962). We have noted *Mamula* v. *United Steelworkers of America*, 304 F. 2d 108 (3 Cir.), cert. denied, 371 U. S. 823 (1962) and *Beckman* v. *Local No. 46 Int'l Ass'n of Bridge etc. Workers*, 314 F. 2d 848 (7 Cir. 1963), but find it unnecessary to express any opinion as to the conclusions reached on the facts there at issue.

too facile. We have no occasion now to consider whether such severe eligibility requirements as have here been imposed especially as to the District Presidency, or the self-nomination restriction, if either stood alone, would still infringe the guarantee of § 101(a)(1) to "equal rights and privileges * * * to nominate candidates" or would only raise a question of denial of "a reasonable opportunity * * * for the nomination of candidates" etc. under § 401(e). The fact that plaintiffs sought unsuccessfully to nominate themselves and in that sense are complaining also as candidates does not blot out the main thrust of their complaint—that the union has deprived members of the equal rights and privileges to nominate guaranteed by § 101(a)(1).

Whatever the right answer may be with respect to the permissibility of pre-election suits to enforce rights granted only by § 401, we see no reason to think that the assurance of "a reasonable opportunity * * * for the nomination of candidates" given by § 401(e), and its consequent overlap with § 101(a)(1), should be considered to have withdrawn jurisdiction granted by § 102 in a case not affected by the exclusive "post-election" provision of § 403. The Senate superimposed Title I on the Kennedy-Ervin bill because it was not satisfied that the latter, including the provisions now contained in Title IV, went far enough in protecting basic rights of union members. It agreed with Senator McClellan's position that the bill should define fundamental rights of union members "just as the rights of the American people are set forth in the Bill of Rights of the Constitution of the United States," Legislative History, 1104, and overrode Senator Kennedy's initial objection that union members were better protected "by present State law, by the provisions of the bill, and by the Taft-Hartley Act." Legislative History, 1108.[4] Moreover, whereas the Mc-

[4] Senator Kennedy in no way opposed the substance of the Bill of Rights proposed by Senator McClellan but feared that it might

Clellan amendment had provided for civil enforcement of the Bill of Rights through suit by the Secretary of Labor (see § 103 of the amendment, Legislative History, 1102), the Kuchel amendment substituted the private suit now embodied in § 102, this being described as "one of the major changes in the proposal." Legislative History, 1232.

The District Court thus erred in dismissing the complaint for want of jurisdiction.[5] The plaintiffs' right to a temporary injunction against the holding of the election under the present constitution and bylaws is plain, and such an injunction should issue promptly. The district court should also require the union to submit new provisions as to the right to nominate that will meet the mandate of § 101(a)(1). See *Virginian Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515, 552-53 (1937); *Brown* v. *Board of Education*, 349 U. S. 294, 300 (1955).

The judgment is reversed and the cause remanded for further proceedings consistent with this opinion. The mandate will issue forthwith.

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eliminate protection afforded by state law without creating a satisfactory alternative. Although he voted against the McClellan amendment, Legislative History, 1119, his objections apparently were met by the anti-preemption language in § 103 of Senator Kuchel's substitute, Legislative History, 1221, and he voted for Title I in that form, Legislative History, 1239.

[5] We have not overlooked an argument that the first sentence of § 403 protects a union against being required to conduct an election "in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this title," and that plaintiffs must thus rely on § 401(e) rather than on § 101(a)(1) in order to win, since § 101(a)(1) is not in "this title." We do not think the statute should be read so literally, particularly in view of the legislative history summarized above, and therefore need not consider an alternative argument that in a suit based on § 101(a)(1) a plaintiff can avail himself of § 401(e) as a replication to a defense based on § 403 even if § 402 is the exclusive remedy for affirmatively enforcing Title IV rights (other than those noted in fn. 1). Compare *Skelly Oil Co.* v. *Phillips Petroleum Co.*, 339 U. S. 667, 672 (1950).

Appendix B

Judgment of Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the seventh day of November, one thousand nine hundred and sixty-three.

Present:

HON. J. EDWARD LUMBARD,
Chief Judge,
HON. HAROLD R. MEDINA,
HON. HENRY J. FRIENDLY,
Circuit Judges.

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETA, each of them individually and on behalf of all other persons similarly situated,

Plaintiffs-Appellants,

v.

JESSES M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer of DISTRICT NO. 1 MARINE ENGINEERS BENEFICIAL ASSOCIATION, AFL-CIO,

Defendant-Appellee.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is revised and that the action be and it hereby is remanded for further proceedings consistent with the opinion of this court with costs to the appellants.

A. DANIEL FUSARO,
Clerk.

Appendix B

Opinion of District Court

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated,

Plaintiffs,

against

JESSES M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer of DISTRICT NO. 1 NATIONAL MARINE ENGINEERS BENEFICIAL ASSOCIATION, AFL-CIO,

Defendant.

BURTON H. HALL, ESQ., of New York, N. Y.
Attorney for Plaintiffs.

PRESSMAN & SCRIBNER, ESQS., of New York, N. Y.
Attorney for Defendant,
DAVID SCRIBNER, ESQ., of Counsel.

FEINBERG, *D. J.*

This is a motion for a preliminary injunction brought by three members of District No. 1, National Marine Engineers Beneficial Association ("District No. 1"), on behalf of themselves and others similarly situated, against District No. 1, its President or Secretary-Treasurer. The complaint alleges jurisdiction under Section 102 of the Labor-Management Reporting and Disclosure Act of 1959 (the "Act"),[1] 29 U. S. C. § 412. Plaintiffs ask this Court to enjoin District No. 1 from holding a general election of

[1] Commonly known as the "Landrum-Griffin Act."

local union officers on the ground that plaintiffs' rights to nominate candidates, as secured to them under Section 101 (a) (1) of the Act, 29 U. S. C. § 411 (a) (1), have been infringed. Plaintiffs also allege that defendant District No. 1 has failed to appoint an impartial administrator to supervise the forthcoming election, and claim that this failure not only violates their rights to vote under Section 101 (a) (1) of the Act, 29 U. S. C. § 411 (a) (1), but also contravenes a provision of the District's bylaws which requires designation of an impartial administrator. Defendant has filed a cross-motion to dismiss the complaint on the grounds that this Court lacks jurisdiction over the subject matter, and that the complaint fails to state a claim upon which relief can be granted.

The important facts are not in dispute, and, as they appear from the affidavits filed by both parties, may be summarized as follows: the National Marine Engineers Beneficial Association ("NMEBA"), a national affiliate of the AFL-CIO, represents over ninety per cent of the licensed marine engineers in the United States. It is now composed of various district organizations; District No. 1, of which plaintiffs are members in good standing, has over 6,000 members. The District will hold a general election during the ninety-day period commencing September 1, 1963, and it is this election which plaintiffs seek to enjoin. Counsel have stipulated that the mailing of ballots would not of itself adversely affect or enlarge the rights and obligations of the parties to the proceeding.

Prior to January 1, 1961, NMEBA was composed of various "locals." At that time, a member could nominate any other member for local office, subject to certain eligibility requirements. On January 1, 1961, NMEBA was reorganized on a "district" basis, and thereafter certain changes, of which plaintiffs complain, were made in nomination procedures and eligibility requirements for officers.

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(1) Members of District No. 1 are confined to self nomination. Article X of the bylaws of District No. 1 provides:

> "Elections for District-wide Offices
>
> "Section 1. Nominations. Any member may submit his name for nomination for the offices of District President, District Vice President, Branch Agent, Patrolman • • • or Representative to the National Convention by delivery in person or sending by registered mail, a letter addressed to the Credentials Committee"[2]

(2) In March 1963, the national constitution of NMEBA was amended to provide that only those non-officer members who have served 180 days or more of sea time on NMEBA-contracted vessels in two of the previous three years are eligible for nomination, that no member may be a candidate for District President unless he is a full time paid official of the union, and that no member may run for District office unless he has been a member of NMEBA for five years. Article X, Section 9 of the Constitution of NMEBA provides:

> "Any member shall be eligible for nomination to and election as a full time and paid elective office of a District provided he is at the time of nomination and election a member of good standing and (a) has been a member of the National Association or of any other organization which has duly affiliated with the National Association, for 5 years immediately preceding the date of closing of nominations; and (b) has been a member of the District and/or predecessor Subordinate Association for 2 years immediately preceding said date; and (c) has had either

[2] See Exhibit "A" attached to defendant's Affidavit in Opposition to Application for Preliminary Injunction.

180 days of employment on vessels covered by collective bargaining agreements with the Union during each of any 2 full calendar years of the 3 calendar years immediately preceding the closing date of nominations, or equal time served as full time and paid elected or appointed official of the National Association or of a Subordinate Association or the District or of any other organization which has duly affiliated with the National Association.

"A candidate for District President, in addition to the qualifications specified above, must have previously been elected and served as a full time and paid official of a Subordinate Association, District or of any organization which has duly affiliated with the National Association."[3]

(3) Under a ruling of the Credentials Committee of District No. 1, members are prohibited from nominating themselves to more than one office.

Plaintiffs contend that the above bylaw, constitutional amendment and ruling by the Credentials Committee unreasonably deprive members of District No. 1 of their right to nominate candidates as guaranteed to them under Section 101 (a) (1) of the Act, 29 U. S. C. § 411 (a) (1). Defendant contends that this Court is without jurisdiction to entertain this motion, that plaintiffs have made no showing warranting the relief sought, that plaintiffs have failed to exhaust their intra-union remedies, and that, in any event, plaintiffs have been guilty of laches.

Consideration of defendant's jurisidictional argument requires an examination of the Labor-Management Reporting and Disclosure Act of 1959, a comprehensive statute which protects the rights of union members through various

[3] See Exhibit "C" attached to defendant's Affidavit in Opposition to Application for Preliminary Injunction.

remedies. Title I of the Act is entitled "Bill of Rights of Members of Labor Organizations." Contained within Title I is Section 101 (a) (1), 29 U.S. C. § 411 (a) (1), which provides:

> "Equal rights.—Every member of a labor organization shall have equal rights and privileges within such organization *to nominate candidates,* to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, *subject to reasonable rules and regulations in such organization's constitution and by-laws.*" (Emphasis added.)

A procedure to enforce these rights is provided in Section 102 of the Act, 29 U. S. C. § 412. This section permits any person, whose rights under Title I have been infringed, to bring a civil action in a Federal District Court for appropriate relief.

Title IV of the Act is entitled "Elections" and subtitled "Terms of office; election procedures." This Title includes Section 401 (e) of the Act, 29 U. S. C. § 481 (e), which states:

> "In any election required by this section which is to be held by secret ballot *a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed)* and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof." (Emphasis added.)

The remedy for a violation of Section 401(e) of the Act, 29 U. S. C. § 481 (e), is specifically set forth in Section 402

of the Act, 29 U. S. C. § 482. Section 402, in substance, provides a post-election remedy whereby complaint is made to the Secretary of Labor who institutes a civil action if he finds upon investigation that there is probable cause. That section states:

> "(a) A member of a labor organization—
>
> (1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or
>
> (2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation, may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 481 of this title (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.
>
> "(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this subchapter has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this subchapter

> and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization."

Thus, the structure of the Act clearly differentiates between violations of Title I and Title IV, and different remedies are provided for each.

Defendant's jurisdictional attack is based on two premises: this Court has no pre-election jurisdiction over Title IV violations, and plaintiffs' complaint alleges, in fact, only such violations, although jurisdiction is stated in terms of Title I.

On the first point, the cases indicate that defendant is correct and that the only remedy for violations of Title IV is the post-election procedure initiated by a complaint to the Secretary of Labor. This was the conclusion reached by Judge Wyatt of this Court in *Jackson* v. *NMEBA*[4] decided only a few weeks ago. That case involved an attack on two of the rules complained of by plaintiffs here (the self-nomination requirement and the requirement of previous service as a full time paid elected official). In the course of denying relief to plaintiffs, the Court stated.[5]

> "It is the eligibility requirements which plaintiff attacks and these are *exclusively* dealt with by Section 401 (e) [of Title IV]. Where a particular subject is dealt with by a section of the Act—for example, the eligibility of candidates in Section 401 (i)—it must be assumed that Congress intended the specific provisions to govern and not the general provisions of Section 101 (a) [of Title I]."

Other cases support the proposition that the Federal District Courts do not have jurisdiction for violations of

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[4] 63 Civ. 2226, S. D. N. Y., August 16, 1963.

[5] *Id.* at 5.

Title IV, except in accordance with the procedure set up in the statute which calls, in the first instance, for an investigation by the Secretary of Labor. See *Mamula* v. *United Steelworkers*, 304 F. 2d 108 (3 Cir.), *cert. denied*, 371 U. S. 823 (1962); *Colpo* v. *Highway Truck Drivers and Helpers*, 201 F. Supp. 307 (D. Del. 1961), *vacated as moot*, 305 F. 2d 362 (3 Cir.) *cert. denied*, 371 U. S. 890 (1962); *cf. Hamilton* v. *Guinan*, 199 F. Supp. 562 (S. D. N. Y. 1961); *Acovedo* v. *Bookbinders and Machine Operators*, 196 F. Supp. 308 (S. D. N. Y. 1961). Although a contrary view has been advanced,[6] it appears that the authority is the other way.

Plaintiffs appear to recognize the force of this authority, because they emphasize that complaint is made only of alleged violations of Title I. Each of the rules they attack, according to plaintiffs, interferes with the right to nominate as guaranteed them by Section 101 (a) (1) of the Act quoted above. Plaintiffs contend, for example, that they may challenge under Title I the reasonableness of the requirement of sea time because they have a right to nominate someone who has not had sea time. However, the requirement of sea time is clearly a "qualification" on candidacy dealt with by Title IV. It is true that a requirement of sea time, as a prerequisite to candidacy, limits the number of people plaintiffs can nominate. However, it is hard to imagine any rule or requirement on candidacy, no matter how reasonable, which would not similarly limit the number of people plaintiffs might nominate. If plaintiffs' argument were accepted, every eligibility requirement for office would fall within Title I. However, the structure of the Act is clearly different. The reasonableness of the sea time requirement, therefore, must be tested in accordance with the procedures set

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[6] See Summers, *Pre-Emption and the Labor Reform Act—Dual Rights and Remedies*, 22 Ohio St. L. J. 119, 135-140 (1961); *American Bar Ass'n, Labor Relations Law*, 1962 Proceedings, at 74-76.

forth for violations of Title IV and not through the procedures under Title I.

A similar point in an analogous situation was made recently in *Jackson* v. *International Longshoremen's Ass'n*, 212 F. Supp. 79 (E. D. La. 1962), where plaintiffs complained of the disqualification of a candidate for whom they wanted to vote. The Court refused an injunction and pointed out as follows (212 F. Supp. at 82):

> "In the present case, there can be no question but what the complainants herein were not deprived of the right to nominate, nor were they deprived of the right to vote. *Title I of the Act does not, of course, guarantee to any union member the right to vote for a specific person, but guarantees him only the right to vote for a duly nominated and qualified candidate.* The pleadings, on their face, affirmatively show that the complainants herein did, in fact, nominate the candidates of their choice. It was subsequent to the nomination, and during the process of certifying candidates as to their qualifications, that the present dispute actually arose. Whether or not the disqualification of the candidates in question was proper is a matter to be resolved in accordance with the provisions of Title IV of the Act. Title IV deals comprehensively with the procedure for nominating and electing officials. It provides that reasonable opportunities must be given members to nominate, and that every member in good standing shall be eligible to be a candidate and to hold office subject to, or course [sic], reasonable rules and regulations of the union. Title IV further specifically sets forth in 29 U. S. C. A. § 482 that violation of the provisions outlined therein can only be enforced by the Secretary of Labor once an election is held." (Emphasis added.)

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All of the matters complained of by plaintiffs appear to be qualifications on eligibility for candidacy and, therefore, their reasonableness or lack of reasonableness will have to be tested in accordance with Title IV procedures. This is certainly true not only of the sea time requirement, but also of the requirements of five year prior membership in the union in order to run for office, limitation to candidacy for only one office, and the necessity of being a full time paid prior official in order to run for union president. It may be possible to view the self-nomination requirement as a Title I problem rather than a Title IV problem, but even if it is, the requirement seems reasonable. This certainly was the Court's view in *Jackson* v. *NMEBA, supra*, when it stated that such a provision "makes it as easy to be nominated as possible." *Id.* at 5. Defendant points out that a union meeting or conference to place his name in nomination under this provision, a member does not even have to attend tion, but can write a letter to the union from any port in any part of the world declaring his candidacy. While the new provision does have a limiting effect in some ways, the argument that it is, on the whole, reasonable is persuasive.

Therefore, with regard to all of the complaints on eligibility and nomination procedure, it appears that this Court is without jurisdiction to consider them or in the case of the self-nomination procedure, the complaint is not well-founded. The cases relied on by plaintiffs do not compel a contrary view. *Mayfield* v. *Babcock*, 47 CCH Lab. L. Rep. ¶ 18,375 (E. D. N. Y. 1963), did not deal with a title IV violation, but with a Title I violation involving an allegation that a member's right to vote in secret was lost. Similarly, *Boggia* v. *Hoffa*[7] dealt with eligibility of members to vote, also clearly a Title I problem.

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[7] 41 CCH Lab. L. Rep. ¶ 16,731 (E. D. N. Y.), *modified*, 41 CCH Lab. L. Rep. ¶ 16,732 (2 Cir. 1960), *motion to certify result of election granted*, 41 CCH Lab. L. Rep. ¶ 16,733 (E. D. N. Y. 1962).

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With regard to plaintiffs' claim that an impartial administrator has not been designated in accordance with the District's bylaws, the answering affidavit of defendant makes clear that an impartial administrator has, in fact, been designated.[8] Since this is not seriously in dispute, the Court will not consider the claim further at this time.

On the entire record, I do not feel that plaintiffs have shown by clear and convincing facts that they have a reasonable probability of success in final hearing on this matter. Because of the disposition on defendant's main point, it is unnecessary to consider its other arguments, such as failure to exhaust intra-union remedies and laches.

The foregoing shall constitute findings of fact and conclusions of law in accordance with Fed. R. Civ. P. 52 (a). The motion to dismiss is granted and the application for a preliminary injunction is denied. Submit order on notice.

Dated: New York, N. Y.
August 31, 1963.

/s/ WILFRED FEINBERG,
U. S. D. J.

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[8] Affidavit of Jesse S. Calhoon in Opposition to Application for Preliminary Injunction, pp. 1-3.

APPENDIX C

NICHOLAS MAMULA

v.

UNITED STEELWORKERS OF AMERICA, an Unincorporated Labor Union, and I. W. ABEL, International Secretary-Treasurer Thereof, Appellants.

No. 13782.

UNITED STATES COURT OF APPEALS

THIRD CIRCUIT

Argued March 9, 1962.

Decided June 5, 1962.

304 F. 2d 108

Before KALODNER, STALEY and HASTIE, Circuit Judges.

STALEY, Circuit Judge.

The plaintiff, Nicholas Mamula, commenced this action under the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA"), 29 U. S. C. A. § 401 et seq., alleging that certain of the rights guaranteed to him thereunder were violated by defendants, United Steelworkers of America, AFL-CIO ("union"), and its Secretary-Treasurer, I. W. Abel. At all times relevant, plaintiff was president of Local Union 1211 of District 20 of the union. The union is divided into a number of geographically defined "districts". Its constitution provides that each local shall have the right to nominate a candidate for district director, and nomination by any five locals within a district shall

entitle the nominee to be placed on the district ballot. The union's constitution, however, does not prescribe the procedure for selecting nominees. This is left to the locals.

Nomination meetings were held by locals in District 20 in November and December of 1960. Plaintiff's name was not placed on the ballot for district director, although by letter his counsel requested the union to do so. Attached to the letter were affidavits executed by members of six different locals within District 20. Each one indicated that plaintiff's name had been placed in nomination for district director at each of the respective local's nomination meeting. The record showed, however, that plaintiff was defeated. Before the actual election for district director was held, plaintiff filed a complaint in the district court, alleging that defendants had denied him an opportunity to submit his name for candidacy to the membership and that the union's constitution and by-laws fail to prescribe procedures to be followed in selecting a nominee. This, he said, constituted a violation of Title I, §§ 101(a)(1)(2)(4) and 102, 29 U. S. C. A. §§ 411(a)(1)(2)(4) and 412 of the LMRDA, and requested a temporary injunction or restraining order enjoining the election of a district director, and that the court direct the union to place his name on the district ballot. The district court denied the request, and the election was held. The matter came on for full hearing, and thereafter the district court entered an order setting the election aside, under Title I, § 101(a)(1) of the LMRDA, 29 U. S. C. A. § 411(a)(1).[1] It is from this order that

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[1] Section 101 in pertinent part reads as follows:

"(a) (1) Equal rights—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws." 29 U. S. C. A. § 411(a)(1).

defendants have appealed. More particularly, the district court found that the union's constitution was "lacking and deficient in failing to set forth nominating procedures for its International officers in order that members rights under Section 101 will be protected." Some of the particular inadequacies listed by the district court were that the union hall, where voting was conducted, had a capacity of 600, while Local 1211 had a membership in excess of 11,000. Further, that the nomination and voting took place at one meeting, although at the time set for the meeting one-third of the membership was at work and unable to attend.

[1] The defendants first contend that Title IV, §§ 401-403 of the LMRDA, 29 U. S. C. A. §§ 481-483, and not Title I, governs the procedures for nominating and electing officers and sets forth exclusive remedies for violation of these procedures, and that under Title IV the plaintiff lacks standing to bring this action. A reading of Titles I and IV in conjunction with the legislative history of the LMRDA, and consideration of the pertinent decisions that have been rendered, compel us to conclude that this contention is correct.

[2] Title I guarantees union members an equal opportunity to vote, while Title IV prescribes the procedures that are to be followed in nominating and electing union officers. It also, just as clearly, prescribes the remedies available to a union member where these procedures are not followed. The present Title I was not in the LMRDA when it left Committee.[2] Title I, frequently referred to as the bill of rights section, was introduced as an amendment to the LMRDA by Senator McClellan who, during debate, referred to § 101(a)(1), saying:

> "The select committee found time and again the denial of the right to vote, the denial of the right

[2] S. 1555, 80th Cong. 1st Sess. 1959.

to work, the denial of the right to have a voice, the denial of the basic human rights on which our very freedom was founded."[3]

The desire to protect the fundamental right of a union member to vote was again apparent when Senator McClellan told the Senate:

"• • • [O]bviously give the union members some rights in the bill, because we insert in the bill a criminal penalty in the case of those who violate the rights given the union members. I simply propose that we define and describe those rights, which are basic, and which every citizen of the country is entitled to. I believe we should elucidate on this point."[4]

Earlier he referred to it in debate and said:

"If this bill should be enacted into law, it would bring to the conduct of union affairs and to union members the reality of some of the freedoms from oppression that we enjoy as citizens by virtue of the Constitution of the United States, which incidentally does not make an exception for union members."[5]

Before he offered the amendment containing the bill of rights section, Senator McClellan introduced S. 1137.[6] The proposed bill contained a bill of rights provision which expressly directed that nominations and elections be conducted in accordance with section 302 thereof. That section, in turn, was in substance similar to the provisions of Title IV of the LMRDA.

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[3] 2 Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, p. 1103. U. S. Govt. Printing Office, 1939.

[4] *Id.* at p. 1106.

[5] *Id.* at p. 1098.

[6] S. 1137, 86th Cong. 1st Sess. 1959.

Appendix C

On February 6, 1959, Senator Mundt introduced S. 1002, which was directed specifically at providing democratic procedure in the election of officers. That bill contained detailed provisions dealing with union nominations and elections, and was considered by the Senate side by side with the McClellan bill of rights amendment, and was not viewed as being incompatible with it. The Mundt bill did not pass the Senate. Thereafter, the McClellan amendment was replaced by the so-called Kuchel substitute that passed the Senate.[7] Debate on the substitute made it clear that it was in the main a reenactment of the McClellan amendment, which is now Title I.[8]

Title IV, on the other hand, deals comprehensively with the procedure for nominating and electing union officials. It would be inappropirate to set it out in extenso here, so we shall summarize its provisions. Section 401 prescribes the frequency of elections for certain enumerated officers, distinguishing between local and international officers, and requires use of a secret ballot. It goes on to require that balloting shall be by members in good standing or at a convention of delegates selected by ballot.[9] Further, a union is under a duty to comply with all reasonable requests by candidates for union office to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing and to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members. Also, every bona fide candidate has the right, which he can exercise once within a 30-day period prior to an election of a labor organization in which he is a candidate, to inspect

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[7] 2 Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, p. 1259.

[8] *Id.* at pp. 1229-1239.

[9] 29 U. S. C. A. § 481(a) & (b).

a list containing the names and last known addresses of all members of the labor organization. The union is under an obligation to provide adequate safeguards to insure a fair election, including the right of any candidate to have an observer at the polls and at the counting of ballots.[10] Reasonable opportunities must be given members to nominate, and every member in good standing shall be eligible to be a candidate and to hold office, and shall have the right to vote for or otherwise support the candidate or candidates of his choice without being subject to penalty or discipline. Every member is entitled to advance notice of an election. Detailed procedures are provided for retaining ballots and other records, and the election must be conducted in accordance with the by-laws and constitution of the union, except to the extent that they are inconsistent with Title IV.[11] The credentials of delegates to a convention that elects officers, as well as the minutes of the convention and other records of the convention pertaining to the election of officers, shall be retained for one year.[12] The items for which union funds may be spent in union elections is limited to providing notices and factual statements of issues not involving candidates and other expenses necessary for the holding of an election. Title IV further specifically sets forth in § 402, 29 U. S. C. A. § 482, that violations of the provisions outlined above can only be enforced by the Secretary of Labor once an election is held. The pertinent parts of the provisions read this way:

> "A member of a labor organization—
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> "(1) who has exhausted the remedies available under the constitution and by-laws of such organization and of any parent body, or

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[10] *Id.* at § 481(c).
[11] *Id.* at § 481(e).
[12] *Id.* at § 481(f).

> "(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation, may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 401 (including violat n of the constitution and by-laws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide." 29 U. S. C. A. § 482(a).

Subsection (b) requires the Secretary of Labor to investigate complaints and to commence an action in an appropriate federal court to set aside any election where he has reason to believe that Title IV has been violated. The court has power to set aside the election and direct that a new one be held under supervision of the Secretary of Labor. The Secretary, after conducting the election, must certify to the court the names of persons elected and the court shall then enter a decree declaring that such persons have been elected. If the proceeding is for the removal of officers, the Secretary must certify the election results and the court shall enter an appropriate decree declaring whether such officers have been removed.[13] Title IV goes on in § 403, 29 U. S. C. A. § 483, to provide that: "The remedy provided by this title for challenging an election already conducted shall be exclusive." Furthermore, where an individual union member has standing to bring suit under Title IV, Congress clearly so indicated. Section 401(c) guarantees candidates for union office the right to

[13] *Id.* at § 482(c).

inspect certain union membership lists, and upon failure of union officials to make such lists available, any bona fide candidate has standing to bring suit in a district court of the United States.

The bill introduced by Senator Kennedy, and known as the Kennedy-Ervin bill, contained the present remedy.[14] The committee report accompanying the bill categorically stated that post election actions to enforce the nomination and election provisions could only be initiated in the courts by the Secretary of Labor.[15] At the same time that the Kennedy-Ervin bill was under consideration, an administration bill was introduced.[16] That bill expressly provided for enforcement by both the Secretary and individual union members. The Kennedy-Ervin bill, and not the administration bill, was passed by the Senate. When the LMRDA reached the House, Title IV was changed to include a provision that read as follows:

> "§ 402(a). A member of a labor organization—
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> "(1) who is aggrieved by any violation of section 401, and
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> "(2) who (A) has exhausted the reasonable remedies available under the constitution and bylaws of such organization and of any national or international labor organization with which such organization is affiliated, or (B) has diligently pursued such available remedies without receiving a final decision within six calendar months after their being invoked, may bring a civil action against such labor

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[14] S. 1555, 86th Cong. 1st Sess. 1959.

[15] S. Rep. No. 187, 1 Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, pp. 397, 417, U. S. Code Cong. & Adm.-News 1959, p. 2318 *et seq.*

[16] S. 748, 86th Cong., 1st Sess. 1959.

organization in any district court of the United States * * *"[17]

That provision was removed, however, by the conference committee, prompting Senator Kennedy to say, while reporting back to the Senate:

> "The provisions requiring fair and periodic elections are taken from the Senate bill. The Landrum-Griffin bill would have substituted a variety of suits by individual union members for enforcement by the Secretary of Labor. The House conferees receded from this position and the Senate provision was restored".[18]

Several recent district court decisions that have discussed the interplay between Titles I and IV, and the plaintiff's standing to bring this action, are in accord with our conclusion. They are Colpo v. Highway Truck Drivers and Helpers, Local 107, 201 F. Supp. 307 (D. Del. 1961); Gammon v. International Ass'n of Machinists, 199 F. Supp. 433 (N. D. Ga. 1961); Acevedo v. Bookbinders and Machine Operators Local 25, 196 F. Supp. 308 (S. D. N. Y. 1961); Johnson v. San Diego Waiters & Bartenders Union Local 500, 190 F. Supp. 444 (S. D. Calif. 1961); Myers v. International Union of Operating Engineers, 40 CCH Labor Cases ¶ 66,436 (E. D. Mich. 1960); Byrd v. Archer, 38 CCH Labor Cases ¶ 66,083, (S. D. Calif. 1959).[19]

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[17] 2 Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, p. 1697.

[18] *Id.* at p. 1433.

[19] The Commissioner of the Bureau of Labor-Management Reports of the Department of Labor in a letter to plaintiff's counsel said:

> "While individual union members may have the right under state law to bring a private action to enforce the constitution

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[3] Even if this were an action within the ambit of § 101(a)(1) of Title I, 29 U. S. C. A. § 411(a)(1), it is clear that the plaintiff lacks standing to bring it. The enforcement provision for Title I is § 102, 29 U. S. C. A. § 412, which provides that: "Any person whose rights secured by the provisions of this title have been infringed * * * may bring a civil action in the district court of the United States for * * * relief * * *." There is nothing in the record showing any of plaintiff's rights as a union member set forth in Title I were violated by defendants. The facts point, the other way, for he participated in the meeting, was its presiding officer, and had ample opportunity to nominate candidates. There is nothing in the provisions of Title I or its legislative history [20] that would give plaintiff standing as a candidate to bring this action. That is borne out by the district courts that have considered the question. Gammon v. International Ass'n of Machinists, supra; Johnson v. San Diego Waiters Union Local 500,

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[Continued from page 47]

and bylaws of the organization with respect to elections prior to the conduct thereof, once the election has been held the remedy provided by Section 402 becomes exclusive to the extent that such members' action challenges the conduct of the election. * * * After the election has been held, the member would have to follow the procedures prescribed by Section 402 i.e. he must first invoke the remedies available under the organization's constitution and bylaws and if he fails to obtain satisfaction within the union he may then complain to the Secretary within the time prescribed by 402(a). * * * But the Secretary cannot proceed with any investigation of the election under Section 402 until such time as your clients see fit to file complaints with him which meet the conditions set forth in Section 402(a) of the Act."

[20] The legislative history on the point can be found in 2 Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, pp. 1232-1233; 105 Cong. Rec. 10085 (86th Cong., 1st Sess. 1959).

supra; Byrd v. Acher, supra. Furthermore, plaintiff does not have standing to enforce the right of other union members. Johnson v. Stevenson, 170 F. 2d 108 (C. A. 5, 1948), cert. denied, 336 U. S. 904, 69 S. Ct. 491, 93 L. Ed. 1069 (1949). On frequent occasions, the Supreme Court has held that an individual does not have standing to litigate the rights of another. E. g., McGowan v. Maryland, 366 U. S. 420, 81 S. Ct. 1101, 6 L. Ed. 2d 393 (1961); Cronin v. Adams, 192 U. S. 108, 24 S. Ct. 219, 48 L. Ed. 365 (1904).

The judgment of the district court will be reversed and the cause remanded with directions that the complaint be dismissed.